
UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

Victor Del Río,

Plaintiff,

versus

Tracey Del Río,

Defendant.

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Miscellaneous Action H-09-76

Opinion on Dismissal

1. *Background.*

Victor Del Río has petitioned for an emergency writ of mandamus and habeas corpus because he wants immediate custody of his son, Nicholas, from his ex-wife, Tracey. The 31st family court in Harris County awarded full custody of their son to Tracey several years ago. Victor says that the order is endangering his son because Nicholas suffers 96 seizures a day in Tracey's care.

Victor also says while he and Nicholas have endured "torment and contempt" by Tracey for years, he is more concerned that Tracey is physically abusing him, neglecting treatment of his condition, and forcing him to go to a school that is not compatible for his needs. Victor fears that his son will become mentally retarded in her care and that she will arrest and commit Victor. Victor has admitted to violating the custody order when he did not return Nicholas to Tracey; he attempted to justify it by saying Nicholas prefers to stay with him.

Victor now wants this court to allow him to proceed as a pauper for his writ. He says his constitutional rights of due process have been violated by the family court.

2. *No Jurisdiction.*

Victor's case will be dismissed for want of jurisdiction. Victor has had his day in court over the same claim against the same defendant. He filed his first suit on an identical claim in

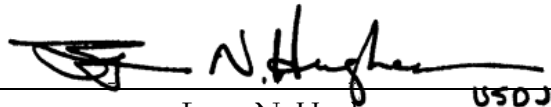
this district in July of 2008 (4:08-cv-2366), and that court dismissed it for want of subject jurisdiction.

Victor filed his second suit in the Northern District of Texas in January of 2009 (3:08-cv-2710), and that court transferred it to the Southern District because venue in Dallas was improper. The court hearing his transferred suit (4:09-cv-79) found that the underlying-Dallas case had never been removed to federal court. Because the court had no federal jurisdiction over Victor's suit, it was dismissed with prejudice about two weeks ago.

When Victor filed this suit, it was his third round for custodial litigation of Nicholas and his second in this district. Because the court has no subject jurisdiction over it, this case will be dismissed with prejudice and his motion to proceed in forma pauperis will be denied.

Victor Del Río may not file another suit here without paying the costs.

Signed on February 27, 2009, at Houston, Texas.



Lynn N. Hughes
United States District Judge